

REMARKS

Status of Claims and Formal Matters

Claims 1, 2, 8, 18, 29-33, 35, and 36 are pending in this application. Claims 18 and 35 are amended, without prejudice, without admission, without surrender of subject matter and without intention of creating any estoppel as to equivalents.

The amendment to claims 18 and 35 is to perfect antecedent basis, which resolves the issue under 35 U.S.C. 112, second paragraph. No new matter is added.

It is submitted that the amendment to the claims presented herein are not made for purposes of patentability within the meaning of 35 U.S.C. §§ 101, 102, 103 or 112. Rather, the amendment is made simply to clarify the scope of protection to which Applicants are entitled.

Restriction Requirement

The Office Action required an election of species under 35 U.S.C. § 121 for the following:

- (A) Antigen presenting cell surface molecule to which the antibody or antibody fragment binds, as recited in claims 8 and 35;
- (B) Notch ligand DSL domain and at least one EGF-like repeat identifiable in claims 8 and 36.

Applicants elect CD206 as the antigen presenting cell (APC) surface molecule, human Delta1 DSL as the Notch ligand DSL domain, and human Delta1 EGF-like repeats as the EGF-like repeat, with traverse, for further prosecution in this application. Claims 1, 2, 8, 18, 29-33, 35, and 36 read on the elected embodiments.

Applicants reserve the right to file divisional applications to non-elected subject matter.

Claim 1 is generic to all species of APC surface molecules, Notch ligand DSL domains, and EGF-like repeats. Applicants understand that, upon the allowance of a generic claim, claims to additional species will be considered, as provided by 37 C.F.R. § 1.141. Applicants also understand that the Examiner can broaden the search to include other species, *e.g.*, upon determining that a species is allowable, or when there is a relationship among the species and/or number of species is not too great.

As a traverse, Applicants point to MPEP Section 803 which states that a requirement for election is inappropriate when the generic claim includes sufficiently few species that a search

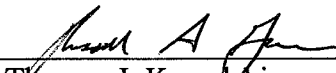
and examination of all the species at one time would not impose a serious burden on the examiner. For the present application, the number of APC surface molecules, Notch ligand DSL domains, and EGF-like repeats to be searched is low. For instance, claim 35 recites only fourteen APC surface molecules, and claim 36 recites only twelve Notch ligands. Thus, the Applicant respectfully requests the Examiner to withdrawal the election of species, or at least permit more than one APC surface molecule, Notch ligand DSL domain, and EGF-like repeat.

Enforcing the present election of species would result in inefficiencies and unnecessary expenditures by both the Applicants and the PTO, as well as extreme prejudice to Applicants (particularly in view of GATT, a shortened patent term may result in any divisional applications filed). Restriction has not been shown to be proper, especially since the number of APC surface molecules, Notch ligand DSL domains, and EGF-like repeats to be searched is low. Indeed, the search and examination of at least more than one APC surface molecule, Notch ligand DSL domain, and EGF-like repeat can be made without undue burden on the Examiner. All of the preceding, therefore, mitigate against restriction.

In view of the above, reconsideration and withdrawal of the requirement for election of species are requested.

Respectfully submitted,

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